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In The
Supreme Court of the United States

KELLY AYOTTE, ATTORNEY GENERAL
OF THE STATE OF NEW HAMPSHIRE,
IN HER OFFICIAL CAPACITY,

Petitioner,

v.

PLANNED PARENTHOOD OF
NORTHERN NEW ENGLAND, ET AL.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit**

BRIEF OF HARLON REEVES, INDIVIDUALLY, AND AS NEXT FRIEND OF HIS MINOR DAUGHTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER AND IN SUPPORT OF REVERSAL

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INTEREST OF *AMICUS CURIAE*[1]

Amicus is Harlon Reeves, individually, and as Next Friend of his minor daughter.[2] Mr. Reeves resides in Texas and is the father of two daughters. One of his daughters, a girl who is mentally challenged, was the unfortunate victim of a child predator when she was only 12 and 13 years of age. As a mentally challenged young girl, she was in desperate need of protection from the evils of this world, such as protection provided by parental notice or parental consent laws. This daughter, who the father requests only be identified as Jane,[3] was sexually assaulted on at least two different occasions by a live-in boyfriend of her mother, with whom Jane was living at the time. Mr. Reeves and Jane's mother were divorced at the time of the sexual assaults suffered by Jane in approximately 1994 and 1995, while Jane was 12 and 13 years of age. Mr. Reeves lived at a different residence than his daughter Jane at the time Jane was sexually assaulted and was horrified at the lack of notification to protect his daughter.

Twice the sexual assaults suffered by Jane resulted in her becoming pregnant. Jane's perpetrator forced her to

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[1] The parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of this Court. Pursuant to this Court's Rule 37.6, none of the counsel for the parties have authored this brief in whole or in part and no one other than amicus or its counsel contributed money or services to the preparation and submission of this brief.

[2] Due to the sensitive nature of this matter, Harlon Reeves requests that his younger daughter remain unnamed in this brief and in any reference to this brief.

[3] Due to the sensitive nature of this matter, Harlon Reeves requests that his other daughter, who was sexually abused and mentally traumatized, be referred to by the pseudonym, Jane, which is not her real name.

have an abortion to terminate both pregnancies, abortions which were performed at an abortion clinic in Fort Worth, Texas. Neither of Jane's parents were notified of either of the abortions by the abortion clinic. If either of Jane's parents would have been notified of the abortion, the live-in boyfriend would not have been able to continue his sexual abuse of Jane and he would not have been able to circumvent the parental rights of Jane's parents. When the parents finally realized the evil done by this man to their defenseless daughter, the assaults and abortions had already occurred. Jane's perpetrator was subsequently criminally prosecuted and was sentenced to approximately 30 years in prison for his crimes.

At the time when Jane was victimized, Texas had no law requiring parental notification before the performing of an abortion on a minor. Jane, being mentally challenged, was in the most vulnerable position of any minor, yet there was no law to protect her. The lack of such law allowed Jane to be repeatedly abused, and denied her parents the ability to protect her from such an atrocious crime. Jane is no longer a minor, but Mr. Reeves has another daughter who is currently a minor. Mr. Reeves knows first hand the devastation that can occur when states do not require a parent to be notified of a minor's request to have an abortion. Mr. Reeves also knows that his younger daughter and other young girls across the country could find themselves faced with the same type of horror if this Court allows parental notification laws to be struck down across the country.

SUMMARY OF ARGUMENT

This case presents an opportunity for this Court to protect innocent young girls and the rights of their parents to protect their daughters and stay informed of any medical attention they request. This Court has previously upheld the right of states to require parental notification before the performing of an abortion on a minor, expressing support for the role of parents in this crucial decision and recognizing the benefit that comes from such parental involvement.[4] Parental notification is the least amount of protection that a state can provide regarding the interest of safety and health of young girls. Parental notification not only protects the rights of parents to fulfill their responsibility to protect their daughters, it also provides protection for minor girls who can be exploited.

Heinous criminals are taking advantage of the lack of state laws that require parental notification for abortions performed on minors, sexually abusing little girls and forcing them to have abortions to conceal their crime. This Court should protect these young girls and the right of their parents to know to what their daughters are being subjected. Otherwise, the lack of such parental notification laws allow sexual predators to continue to rape and devastate the lives of young girls, forcing them to have sex and then forcing them to abort the life that has been created, all against their will.

[4] *Planned Parenthood v. Casey*, 505 U.S. 833, 895 (1992), citing *Ohio v. Akron Center For Reproductive Health et al.*, 497 U.S. 502, 510-519 (1990).

ARGUMENT

I. Lack of parental notification laws allow child predators to prey on minors without the threat of prosecution.

Men who prey on and sexually abuse minor girls are aware that they can force a girl to have an abortion, thereby covering up their crime. National studies on the issue of minors being sexually abused and impregnated by older adult men indicate that "[a]lmost two thirds of adolescent mothers have partners older than 20 years of age."[6] In California, researchers using a study of over 46,000 pregnancies by school-age minor girls discovered that "71%, or over 33,000, were fathered by adult post-high-school men whose mean age was 22.6 years, an average of 5 years older than the mothers. . . . Even among junior high school mothers aged 15 or younger, most births are fathered by adult men 6-7 years their senior. Men aged 25 or older father more births among California school-age girls than do boys under age 18."[6] In fact, there is a collection of studies that have found that most teenage pregnancies are the result of male child predators' sexual acts, by adult men who are substantially older.[7]

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[5] American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy – Current Trends and Issues: 1998*, 103 PEDIATRICS 516, 519 (1999), also available on the worldwide web at <http://www.aap.org/policy/re9828.html>.

[6] Mike A. Males, *Adult Involvement in Teenage Childbearing and STD*, LANCET 64 (July 8, 1995).

[7] *Id.* citing HP Boyer and D. Fine, *Sexual Abuse as a Factor in Adolescent Pregnancy and Child Maltreatment*, FAM. PLAN. PERSPECTIVES at 4 (1992); and HP Gershenson, et al., *The Prevalence of Coercive Experience Among Teenage Mothers*, J. INTERPERS. VIOL. 204 (1989). "Younger teenagers are especially vulnerable to coercive and nonconsensual sex.

(Continued on following page)

The case of Jane Reeves led to a parental notification law in Texas. Mr. Reeves, individually and on behalf of his daughter Jane, ultimately filed a lawsuit against the abortion clinic that performed the two abortions on Jane, when Jane was 12 and the next year when she was 13, without prior consent or notification provided to Mr. Reeves.[8] At the time of both of the forced abortions, Jane had a low cognitive level, equivalent to that of an 8-year-old. Before the first abortion, Jane was so scared and traumatized that she vomited outside the clinic in the bushes. Mr. Reeves found out about the two abortions from an employee of the Texas Department of Protective and Regulatory Services. The clinic grew suspicious about the second abortion, but they still performed the abortion and received payment, waiting until later to notify authorities.

An employee of the Texas Department of Protective and Regulatory Services informed Mr. Reeves of its investigation and suggested that Jane be removed from her mother's home and either be placed in Mr. Reeves' custody or otherwise she would be sent to a foster home. The lawsuit was favorably settled in 1998. The tragedy of Mr. Reeves and his daughter Jane caught the attention of the Texas Legislature and in 1997, a new law was proposed that would require parental notification before an abortion can be performed on a minor. Additionally, Mr. Reeves testified in front of a Texas Senate committee, to voice his

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Involuntary sexual activity has been reported in 74% of sexually active girls younger than 14 years and 60% of those younger than 15 years." American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy – Current Trends and Issues: 1998*, 103 PEDIATRICS 516 (1999).

[8] See *Harlon Reeves, et al. v. West Side Clinic, Inc.*, Cause No. 141-165086-96, 141st Judicial District of Tarrant County (1997).

support of a parental notification law before an abortion can be performed on a minor. The 1997 law was unsuccessful, but the parental notification law was passed in Texas in 1999, signed by then Governor Bush, and remains the law today.[9] Had such a law be in effect at the time of the sexual abuse against Jane, the sexual abuse would not have continued and at least one of Jane's parents would have been informed that Jane had been raped, thereby putting an end to any further contact by the live-in boyfriend sexual predator and Jane. Additionally, if such a law had been in place, Jane would not have been subjected to a second forced abortion, taking away Jane's right to choose life for her child, and get the advice, involvement and protection of her parents.

Even though there were signs of trouble, the abortion clinic performed the abortion a second time on Jane and asked questions later. This type of nonreporting will likely lead the sexual abuse to continue against the minor. These abortion clinics have a pecuniary interest in performing such abortions, making it unlikely that they will protect young girls from child predators without a law that requires clinics to notify parents that an abortion is to be performed.

By not requiring parental notification, there is more of an opportunity for sexual assault to go unreported to the parents and to law enforcement authorities. Child predators may engage in sexual conduct with minor girls, and then force them to have an abortion, without the parents even finding out, when notification is not required. If child predators knew that they could not hide their crime by

[9] TEX. FAM. CODE ANN. §§ 33.001 et seq. (Vernon 1999).

forcing the minor girl to have an abortion, they arguably would be less likely to engage in such acts. On the contrary, these crimes against girls would be brought out into the open if the parent is at the very least notified that the daughter is seeking an abortion.

What is equally as tragic is that some clinics where the abortions are being performed are hesitant to report abortions for minor girls who have been sexually assaulted by an adult man.[10] Also, such a girl, forced by her abuser, can easily deceive the clinic's staff, to avoid accurate reporting of such crime.

Even more striking is that Planned Parenthood of Northern New England, which is the largest abortion provider in the state of Vermont and a party before this Court, admitted that it has a "legal obligation to report instances of sexual assault" but did not report such instances.[11] This information was uncovered as a result of testimony before the Judiciary Committee of the Vermont House of Representatives.[12] This testimony also revealed that twelve girls under the age of sixteen had an abortion in 2000 performed by Planned Parenthood, pregnancies which arguably resulted from illegal sexual acts on the girl

[10] Patricia Donovan, *Caught Between Teens and the Law: Family Planning Programs and Statutory Rape Reporting*, 3 FAMILY PLANNING PERSPECTIVES 5 (1998).

[11] See Parental Notification of Abortion: Hearings on H.218 Before the House Judiciary Comm., 2001-2002 Legis. Sess. (Vt. 2001) (testimony of Nancy Mosher, President and CEO of Planned Parenthood of Northern New England on April 16, 2001); See also Teresa Stanton Collett, *Issue In Vermont Law: Protecting Our Daughters: The Need for the Vermont Parental Notification Law*, 26 VT. L. REV. 101, 120 (Fall 2001).

[12] *Id.*

by an adult man.[13] Planned Parenthood's representative testified that Planned Parenthood did **not** notify the authorities in any of these cases.[14] This Planned Parenthood representative also could not identify any cases of reported abuse in 2000.[15] Based on this shocking information, it is difficult to believe that young girls and their parents can rely on abortion providers to act as a safeguard of protection from sexual predators and molesters.

Furthermore, the lack of reporting may make it more difficult to prosecute the sexual abuser. The lack of reporting can lead to the fetal tissue from the abortion not being preserved, making it nearly impossible to demonstrate sexual contact by the alleged sexual abuser, making it more possible to dismiss the case.[16]

II. Many others have suffered a similar fate as Jane.

Jane is not alone in her tragedy. Other young girls have suffered through a similar ordeal. For instance, in Bridgeport, Connecticut in 2002, a **75**-year-old man, Jimmy Kave, admitted to having sex with an **11**-year-old girl, but according to police, the man claimed that the girl "**enticed him**."[17] Further damage occurred when the minor

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Commonwealth v. Sasville*, 616 N.E.2d 476 (Mass. App. Ct. 1993) (commonwealth's failure to preserve aborted fetus for examination by a defendant charged with rape required the dismissal of the indictment against the defendant). See also *Anderson v. State*, 544 A.2d 265 (Del. 1988) (court suggested that evidence of abortion tends to establish penetration requirement for rape conviction).

[17] See Colin Poitras, *Privacy Rights Vs. Sexual Abuse; Two Doctors Defend Decision Not to Report 11-Year-Old's Pregnancy*, THE HARTFORD COURANT, August 23, 2002, at A1.

girl appeared at the office of two doctors, who conducted a test that revealed that "she might be pregnant," but the doctors never informed anyone, including the girl's mother of the possibility of sexual abuse.

Lawyers for the doctors, and the doctors themselves argued that reporting of sexual activity of minors "violates the sanctity of the doctor-patient relationship" and "such a broad interpretation of the state's child abuse reporting law could discourage sexually active minors from seeking the important medical treatment and counseling they might need." In other words, counseling and confidentiality are more important than protecting minor girls as young as **11** from repeated rape and molestation, allowing the criminal to continue his deplorable acts. The doctors also hid behind the argument that the "state's mandatory reporting laws in effect at the time only required doctors to report possible child sexual abuse if it involved a parent, caregiver, or person given access to a child by a parent or caregiver."[18]

Thankfully, the Connecticut General Assembly amended its reporting laws to make it absolutely clear that "physicians are required to report all suspected child abuse."[19] This story shows that young girls can continue to be raped and molested repeatedly without a parent being notified unless a state has a law that specifically forces such notification, with the threat of criminal prosecution. If this Court strikes down the New Hampshire Parental Notification law, it will call into question similar laws of other states, making minor girls across our nation vulnerable to the attacks of sexual criminals.

[18] *Id.*

[19] *Id.*

Another horrific sex assault of a minor occurred in Seminole County, Florida, where a 30-year-old deputy sheriff was charged with multiple counts of illegal sexual activity with a child, a 15-year-old girl, which was later dropped to one count of lewd and lascivious activity on a minor after the deputy pleaded no contest to such act.[20] The 15-year-old girl was impregnated by the then deputy sheriff, and continually deceived the girl's parents while he continued to engage in such acts with their daughter, later taking her to get an abortion to conceal his illegal acts, without the parents' knowledge.

Additionally, a Planned Parenthood affiliate in Arizona was sued and ruled liable in civil court for failing to report an abortion on a **12**-year-old girl performed by the clinic. The girl was impregnated by her twenty-three year old foster brother. Thereafter, the girl remained at the foster home, which led to her being raped and impregnated a second time.[21]

These minor girls not only deserve to be protected from such sexual assaults, but they also have a fundamental right to the protection and guidance of their parents. See *Bellotti v. Baird*, 443 U.S. 622, 637 (1979). In *Bellotti*,

[20] Sharon McBreen, *Deputy Arrested On Sex Charges; Sheriff Don Eslinger Fired Andre Demetri Golden, Who Is Accused of Having An Affair with a 15-Year-Old Girl*; ORLANDO SENTINEL TRIBUNE, June 14, 1996, at D1; See also Beth Taylor, *Deputy May Avoid Prison In Sex Case: The Seminole Deputy Has Agreed to Plead No Contest to Having Sex With a 15-Year-Old Girl*, ORLANDO SENTINEL TRIBUNE, December 10, 1996, at D3.

[21] *Jane Doe v. Planned Parenthood of Central and Northern Ariz., et al.*, No. CV 2001-014876, Order of Partial Summary Judgment (Superior Ct., Ariz., Cty. of Maricopa, Nov. 26, 2002). See *Glendale Teen Files Lawsuit Against Planned Parenthood*, THE ARIZONA REPUBLIC, Sept. 2, 2001.

the Supreme Court stated, "the guiding role of parents in the upbringing of their children justifies limitations on the freedom of minors." *Id.* This Court stated the following:

> Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for full growth and maturity that make eventual participation in a free society meaningful and rewarding.

Belotti, 443 U.S. at 638-39. The prudent action to take regarding parental notification is to uphold such laws and allow the burden to be on the exercise of the exceptions to such provisions.

III. Parental notification laws protect minors from repeated sexual abuse, a universal principle supported by this court.

This Court's concept of family includes within it principles that support the notion that a parent should at least have knowledge of any medical treatment of his/her minor child.[22] Similarly, this Court has previously recognized that

[22] See *Parham v. J.R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is 'the mere creature of the State' and, on the contrary, asserted that parents generally 'have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.' *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). See also *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) . . . The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience,. and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of

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parents have a "fundamental liberty interest in the care, custody and management" of their children. *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982). Parental autonomy is not delegated by the state, but rather resides in the very nature of parenthood. *Yoder*, 406 U.S. at 232. Regarding the legal heritage of parenthood apart from the power of the state, this Court recognized that, "It is cardinal with us that the custody, care and nurture of the child reside first in the parents whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (internal citations omitted). In fact, the need for parental involvement, "is at its zenith when the decision as to which parental involvement is urged is one – like the abortion decision – with profound and enduring consequences not merely for the physical well-being of the child, but for the child's spiritual, moral, and emotional development."[23]

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their children. 1 WILLIAM BLACKSTONE, COMMENTARIES *447; 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW *190").

[23] *Planned Parenthood v. Camblos*, 155 F.3d 352, 368-69 (4th Cir. 1998) ("See *Bellotti*, 443 U.S. at 637-38, 640, See also *Planned Parenthood v. Danforth*, 428 U.S. 52, 103 (1976) (Stevens, J., concurring in part and dissenting in part) ("Even if [the abortion decision] is the most important kind of a decision a young person may ever make, that assumption merely enhances the quality of the State's interest in maximizing the probability that the decision be made correctly and with full understanding of the consequences of either alternative"); *Casey*, 505 U.S. at 899-900 (explaining that waiting period required by informed parental consent provision legitimately provided "the parent or parents of a pregnant young woman the opportunity to consult with her in private, and to discuss the consequences of her decision in the context of the values and moral or religious principles of their family"); *Hodgson v. Minnesota*, 497 U.S. 417, 480 (1990) (Kennedy, J., concurring in the judgment in part, and dissenting in part) (describing abortion decision as a "grave" one, and observing that "a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support") (quoting *Bellotti*, 443 at 641)").

IV. Parental notification is the least amount of protection that a state can provide, protection that has wide support.

Parental notification is the least amount of protection that a state can provide to shield young girls from sexual assault by adult men. Parental notification not only protects the rights of parents to fulfill their responsibility to protect their daughters, it also provides protection for minor girls who can be exploited. If the Court strikes down this law, it will undoubtedly result in real harm to young girls – allowing rapists and child molesters cover to repeatedly abuse young girls and continue to hide their tracks.

Numerous polls taken from 1998-2005 reveal support for parental consent or notification laws regarding abortion in the range of 73-83% of adults/registered voters polled.[24] Additionally, pro-choice advocates agree that parents should not only be notified, but be "involved" in the process

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[24] See National Right to Life: Polls on Requiring Parental Involvement in Minors' Abortions, April 28, 2005; Fox News/Opinion Dynamics Poll, April 25-26, 2005-78% favor requirement of state law to notify at least one parent or guardian before a minor has an abortion; Quinnipiac University Poll, March 2-7, 2005-75% favor requiring parental notification be a minor can get an abortion; CNN/USA Today/Gallup, January 10-12, 2003-73% favor requirement of parental consent before minor can get any abortion; Wirthlin Worldwide, October 19-22, 2001-83% favor requirement of notifying one parent before an abortion is performed on a minor; Los Angeles Times, June 8-13, 2000-82% favor requirement that minor get consent of at least one parent before having an abortion; CBS News/NY Times, January 1998-78% favor parental consent before minor can have an abortion. Poll results available at http://www.nrlc.org/federal/ccpa/ParentalPolls042904.html (last visited August 3, 2005).

when their minor daughters are pregnant.[25] Therefore, not only is the concept of parental notification supported by fundamental rights of parents guaranteed by the law, parental notification is widely supported and thus should be encouraged and remain codified into the law.

V. Any balance of harm of the right to an abortion should be weighed in favor of protecting minors from sexual predators.

If the Court is going to balance the right to an abortion versus the safety and protection of minor girls from sex assault and forced abortions, the Court should favor protecting minor girls by the simple act of notifying a parent of such abortion. The amount of time that a minor has to wait, 48 hours, to notify a parent is a minimal amount of time compared to the harm that can occur from abuse or repeated abuse.

Mr. Harlon Reeves beseeches this Court to carefully consider the far reaching implications of its decision. Numerous federal courts across the country are jeopardizing the safety and welfare of minor girls and denying the protection and guidance from their parents by striking down essential parental notification laws regarding abortion. These parents simply want to be notified before an abortion is performed on their minor daughter. Granting such a request sends a message to parents and young girls

[25] "NARAL Pro-Choice America believes that loving and responsible parents should be involved when their daughters face crisis pregnancies." NARAL Pro-Choice America Foundation, *Who Decides?: The Status of Women's Reproductive Rights in the United States; Restrictions on Young Women's Access to Abortion* (June 24, 2005) (http://naral.org/yourstate/whodecides/trends/issues_young_women.cfm) (last visited August 3, 2005).

alike, that parents have a vital role in the welfare of their children, a responsibility and a duty to know and protect their health, by, at the least having knowledge of a serious medical operation such as an abortion.

CONCLUSION

This Court should reverse the decision of the court of appeals below and affirm that the decision regarding pregnancy is of great importance and deserves the attention of at least one parent to be notified before a minor receives an abortion. In addition, this Court should be mindful of the devastation that parents and minor girls have suffered because of the lack of a parental notification law regarding abortion, and the potential devastation that will no doubt spread to the State of New Hampshire and other states if these states are not permitted to have a parental notification law regarding abortion. If a minor is required to have ***in-person* parental consent** just to use a **tanning bed**, then certainly mere parental **notification** for a **major medical procedure** (abortion) is constitutionally permissible, especially given the protection such notification affords against sexual predators. *See* N.H. REV. STAT. ANN. § 313-A:31 (2005).

Respectfully submitted,

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